

REMARKS

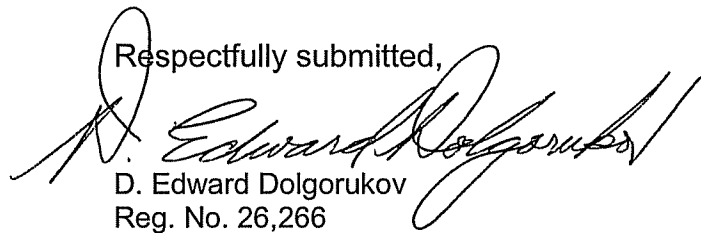
Claims 82 – 87 stand allowed. In the previous Official action, the Examiner-in-Charge of the present application, Mr. Manuel A. Mendez, had requested an update concerning the status of the ongoing litigation between Lexion Medical LLC and Northgate Technologies Inc. In order to update the Examiner, a Supplemental Information Disclosure Statement was filed with a copy of the favorable decision on Lexion's Summary Judgment Motion.

The Examiner, in the Official action dated December 8, 2009, held the earlier amendment not fully responsive to the prior office action because there was no indication of whether there was an appeal of the decision of Judge Kocoras.

The decision of Judge Kocoras is currently on appeal to the Court of Appeals for the Federal Circuit. It is noted that that appeal involves only United States Letters Patent 5,411,474 ('474), and only involves infringement issues. Judgment is final with respect to invalidity issues because the earlier decision of the Federal Circuit affirmed the jury's finding on validity.

Of import to the Interference is the fact that the '474 patent is prior art to the current application. The current continuation-in-part application claims priority to application serial number 09/081,186, which is the application that led to the United States Letters Patent Number 6,608,609 ('609). Certain claims of the '609 patent were previously at issue in the litigation, but those claims were declared invalid, and that

decision was affirmed by the Court of Appeals for the Federal Circuit. Accordingly, the litigation has been concluded with respect to the '609 patent. Therefore, there is no ongoing litigation on issues concerning related subject matter, and the Examiner is courteously requested to expeditiously complete the setting of the Interference upon receipt of this Supplemental Amendment.

Respectfully submitted,

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